



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, MNR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated April 13, 2017
- b. An order for the cost of emergency repairs
- c. An order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on April 13, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 22, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated April 13, 2017?
- b. Whether the tenants are entitled to order to the cost of emergency repairs?
- c. Whether the tenants are entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

### Background and Evidence

The tenancy began on January 15, 2015. The rent is \$600 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$300 at the start of the tenancy.

The landlord testified the tenants have failed to pay the rent for several months and the sum of \$2800 is owed. The landlord acknowledged the tenants paid \$800 in March and the arrears of rent has been reduced accordingly.

The tenants dispute the amount owed. They testified they made a \$2000 payment on December 8, 2016, \$300 in January 2017 and \$800 in March 2017. They acknowledged they have not paid rent for April 2017 and May 2017.

The tenants gave the following evidence:

- The landlord agreed with the tenants they could pay the rent when they were able.
- The rental unit was in an atrocious state when they took possession and they had to take 4 to 5 trailer loads of garbage.
- They were without a stove for 5 months and paid \$150 for purchase a new second hand stove.
- The water is contaminated in the area.
- The rental unit was subject to flooding and they purchased a water pump for the sum of \$600.
- The fridge did not work and they purchased a second hand fridge for \$100.
- The rental unit flooded and the tenants replaced the flooring for a cost of \$900.
- The landlord told them they could take these sums off of the rent.
- They have worked on the landlord's farm and the landlord failed to pay them for the work they had done

The landlord disputes much of the tenants' evidence. He testified he did not agree the tenants could pay when they were able. He said he was continually asking the tenants for payment but they failed to pay the rent. The landlord testified the tenants never him asked if they could make the repairs to the flooring of the rental unit and he never agreed. Further, he never agreed with the tenants that they could deduct the cost of the stove, fridge and flooring from the rent.

### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Analysis:

After carefully considering all of the evidence I made the following determinations:

- The tenants failed to prove that the landlord agreed with tenants that they could pay the rent whenever they could. The landlord made several demands for payment. This is inconsistent with the allegation of the tenant referred to above.
- The tenants failed to prove that the landlord agreed the tenants could deduct the cost of the stove, fridge, pump and flooring from the rent.
- The tenants may or may not have a claim for labor on the farm. However, this is not a matter that an arbitrator has jurisdiction to continue.
- I determined the cost of the stove and fridge are not emergency repairs as defined by the Act.
- I determined the cost of the pump and repairs to the flooring is not emergency repairs as defined by the Act. Even if they are considered to be emergency repairs the tenants failed to provide the landlord "a written account of the emergency repairs accompanied by a receipt for each amount claimed as required by the Act.
- The tenants acknowledged they have not paid the rent for April and May 2017.
- The landlord testified the tenants owe the rent for December 2016, January 2017, February 2017, March 2017, April 2017, and May 2017 or the sum \$3600 (6 months multiplied by \$600 per month) less the \$800 payment in March. There is a dispute as to whether the rent for December 2016 was paid. The tenants testified they paid the rent for December with the \$2000 payment. The landlord acknowledged this payment but testified it was applied to previous arrears. The tenants also gave evidence of a \$300 payment in January 2017 and a \$800

payment in March. The landlord acknowledged the March payment. Even if the tenants' testimony is accepted they still owe a significant amount of rent.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I dismissed the tenant's claim for a monetary order for the cost of emergency repairs without leave to re-apply.

Further, I severed the tenants claim for a reduction of rent repairs, services or facilities agreed upon but not provided as it is not related to the application to cancel the 10 day Notice to End Tenancy. Even if the tenants had provided sufficient evidence the landlord would be entitled to an Order of Possession as the tenants do not have the legal right to withhold the rent. I determined that it is appropriate to dismiss this claim with leave to re-apply.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: May 31, 2017

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Residential Tenancy Branch